

REMARKS

Claims 1-42 are pending in the above-referenced application. In the Office Action, the Examiner indicated that claims 11, 19, and 21-39 are withdrawn as being directed to nonelected subject matter. The Examiner also rejected claims 1-20 under 35 U.S.C. §112 for indefiniteness, rejected claims 40-42 under 35 U.S.C. §101 for nonstatutory subject matter, and rejected claims 1-10, 12-18, 20, and 40-42 under 35 U.S.C. §102 as being anticipated by prior art.

Applicants appreciate the telephone interview courteously granted by the Examiner on July 26, 2006. In the interview, claims 1, 40, 41, and 42 were discussed. Applicants asserted that claims 1, 40, 41, and 42, as per Applicants' proposed amendments, are novel over the cited references because the cited references do not appear to permit flexure of the prosthesis, and the corresponding loading of the calcar region of the femur. The Examiner indicated that novel subject matter is present in the proposed claims, and indicated that the proposed claim amendments would be considered in light of the cited references. Applicants proposed a few modifications to the proposed claim amendments. This paper amends the claims in the manner proposed, along with the modifications discussed in the interview.

Accordingly, by this paper, claims 11, 19, and 21-39 have been cancelled. Claims 1, 3, 6, 9, 10, 12-18, 20, 40, 41, and 42 have been amended to further point out and describe the subject matter of the invention. Claims 43-57 have been added. For the following reasons, claims 1-10, 12-18, 20, and 40-57 are now believed to be in a condition for allowance.

REJECTION OF CLAIMS 1-20 UNDER 35 U.S.C. §112

Claims 1-20 stand rejected under 35 U.S.C. §112 for indefiniteness. By this paper, the portion of claim 1 cited by the Examiner has been replaced with different language that more particularly points out and distinctly claims the subject matter of the invention. Accordingly, withdrawal of the rejection under 35 U.S.C. §112 is respectfully requested.

REJECTION OF CLAIMS 40-42 UNDER 35 U.S.C. §101

Claims 40-42 stand rejected under 35 U.S.C. §101 for nonstatutory subject matter. By this paper, “extending,” as used in claims 40-42, has been replaced with “shaped to extend.” Like the amendment recommended by the Examiner, this change avoids encompassing a human being. Accordingly, withdrawal of the rejection under 35 U.S.C. §101 is respectfully requested.

REJECTION OF CLAIMS 1-3, 12-18, 20, AND 39-42 UNDER 35 U.S.C. 102(b) OVER MEULINK

Claims 1-3, 12-18, 20, and 39-42 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,514,288 to Meulink, et al. (hereinafter “Meulink”). By this paper, Applicants have amended claims 1, 40, 41, and 42 in a manner that clearly distinguishes over Meulink.

More precisely, claim 1, as amended, recites that the “transitional body region is shaped to flex such that, during a normal gait cycle, the bottom surface exerts a significant compressive load on the resected surface of the femur.” Meulink does not disclose a transitional body region having such geometry. Rather, it appears that the corresponding portion of the apparatus of Meulink is thick and rigid, and would not flex in the manner now recited by claim 1.

Claim 40, as amended, recites “wherein, distally of a medial tip of the flange, each cross sectional shape along substantially an entire length of the elongated stem portion is substantially radially symmetrical.” Meulink does not disclose this limitation because the portion of the stem immediately distal to the medial tip of the flange has a cross section that is much longer along the medial-lateral direction than in the anterior-posterior direction. Thus, the stem of Meulink is not radially symmetrical, as recited by claim 40.

Claim 41, as amended, recites “wherein, distally of a medial tip of the flange, substantially an entire length of the elongated stem portion is substantially circumscribed by a substantially cylindrical shape.” Meulink does not disclose this limitation because the portion of the stem immediately distal to the medial tip of the flange has a cross section that is much longer medial-laterally than cross sections distal to it. Hence, the stem of Meulink cannot be circumscribed by a cylinder, as recited by claim 41.

Claim 42, as amended, recites “wherein, distally of a medial tip of the flange, any two maximum cross sectional widths of the elongated stem portion, measured perpendicular to the longitudinal axis, do not differ by more than ten percent.” Meulink does not disclose this limitation because the portion of the stem immediately distal to the medial tip of the flange has a cross section that is much wider medial-laterally, *i.e.*, more than ten percent wider, than cross sections distal to it. Hence, the stem of Meulink does not meet the limitations of claim 42 because it has maximum cross sectional widths that differ by over ten percent.

Claims 2, 3, 12-18, and 20 depend from claim 1, and are therefore novel for the reasons set forth above. Claim 39 has been cancelled. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

REJECTION OF CLAIMS 1-9, 12-18, 20, AND 39-42 UNDER 35 U.S.C. 102(b) OVER BURKE

Claims 1-9, 12-18, 20, and 39-42 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,179,877 to Burke (hereinafter “Burke”). By this paper, Applicants have amended claims 1, 40, 41, and 42 in a manner that clearly distinguishes over Burke for the same reasons set forth above, in the discussion of Meulink. Claims 2-9, 12-18, and 20 depend from claim 1, and are therefore novel for the same reasons. Claim 39 has been cancelled. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

REJECTION OF CLAIMS 1-3, 10, 12-18, 20, AND 39-42 UNDER 35 U.S.C. 102(b) OVER HOFFMAN

Claims 1-3, 10, 12-18, 20, and 39-42 stand rejected under 35 U.S.C. §102(b) as being anticipated by European Published Application No. 0539036 to Hoffman, et al. (hereinafter “Hoffman”). By this paper, Applicants have amended claims 1, 40, 41, and 42 in a manner that clearly distinguishes over Hoffman for the same reasons set forth above, in the discussion of Meulink. Claims 2, 3, 10, 12-18, and 20 depend from claim 1, and are therefore novel for the same reasons. Claim 39 has been cancelled. Accordingly, withdrawal of the rejection under 35 U.S.C. §102(b) is respectfully requested.

CONCLUSION

Applicants respectfully assert that claims 1-10, 12-18, 20, and 40-57 are in condition for allowance. If there are any remaining issues preventing mailing of a Notice of Allowance, the Examiner is respectfully requested to contact the undersigned.

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Respectfully submitted,

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